



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2023-0013]

Hours of Service of Drivers: Application for Exemption; Matthew Killmer

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that Matthew Killmer has requested an exemption from the hours-of-service (HOS) regulations to allow him to split his sleeper-berth time into two 5-hour periods. The applicant indicates that the exemption would allow him to be a more alert and well rested commercial motor vehicle (CMV) operator and allow him to find a safe place to park his CMV. FMCSA requests public comment on the applicant's request for exemption.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA-2023-0013 by any of the following methods:

- **Federal eRulemaking Portal:** www.regulations.gov. See the **Public Participation and Request for Comments** section below for further information.
- **Mail:** Docket Operations, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- **Hand Delivery or Courier:** West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.

- **Fax:** 1-202-493-2251.

Each submission must include the Agency name and the docket number for this notice (FMCSA-2023-0013). Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment.

Please see the **Privacy Act** heading below.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, 20590-0001 between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Docket Operations.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; 202-366-2722 or richard.clemente@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2023-0013), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to www.regulations.gov and put the docket number, “FMCSA-2023-0013” in the “Search” box, and click “Search.” When the new screen appears, click on “Documents” button, then click the “Comment” button associated with the latest notice posted. Another screen will appear, insert the required information. Choose whether you are submitting your comment as an individual, an organization, or anonymous. Click “Submit Comment.”

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and materials received during the comment period.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from certain Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the *Federal Register* (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the *Federal Register* (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Background

Applicant's Request

Matthew Killmer requests an exemption from certain restrictions imposed in 49 CFR 395.1(g)(1)(i)(D) on the use of the sleeper berth to accumulate the required off-duty time under 49 CFR 395.3(a)(1). Section 395.1(g)(1)(i)(D), in relevant part, allows a driver operating a CMV equipped with a sleeper berth to obtain the required 10-hour rest period in a sleeper berth. To use this provision however, the driver must use a combination of sleeper berth time of not more than two periods of either sleeper berth time or a combination of off-duty time and sleeper berth time totaling ten hours if: (1) neither rest period is shorter than 2 hours; and (2) one rest period is at least 7 consecutive hours in the sleeper berth; and (3) driving time before and after each rest period, when added together does not exceed 11 hours under 395.3(a)(3) and does not violate the 14-hour duty-period limit under 395.3(a)(2). Mr. Killmer requests that he, and other drivers, be allowed to shorten the required 7 consecutive hour sleeper berth period to 5 hours to accumulate the required 10-hour rest period.

A copy of Matthew Killmer's application for exemption is included in the docket for this notice.

IV. Request for Comments

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on Matthew Killmer's application for an exemption from the sleeper-berth provision in the HOS regulations in 49 CFR 395(g)(1)(i)(D). All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the Addresses section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable.

In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,
Associate Administrator for Policy.

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